

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES WILLIS BREWER,

Plaintiff,

vs.

No. CIV-02-807 JB/LAM

DETECTIVE ALVARADO, ET AL.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendants' Motion for Extension of Time to File Answer or Other Responsive Pleading and Memorandum in Support Thereof, filed December 31, 2003 (Doc. 39). The issue is whether the Court should permit the Defendants an extension of time to respond to the Complaint. Because the Court finds that granting the relief will not prejudice the Plaintiff, the Court will grant the motion and allow the Defendants an extension of time in which to file their answer or other responsive pleading.

BACKGROUND

The Plaintiff, James Brewer ("Brewer") is appearing *pro se*. On December 10, 2003, Brewer served summonses and complaints on Defendants Oscar Villegas, Pedro T. Gutierrez, Vicente Alvarado, Larry Smyth, James Vautier, Daniel Torgomson, Robert Dilley. Brewer served Defendant Zach Stephenson on December 11, 2003. The Returns of Service were filed with the Court on December 19, 2003 and entered on the Court docket on December 23, 2003. Counsel for the Defendants represents that, except for Vautier, she did not become aware that Brewer had served the Defendants until December 23, 2003.

Pursuant to rule 12 of the Federal Rules of Civil Procedure, Villegas, Gutierrez, Alvarado, Smyth, Vautier, Torgomson, and Dilley must serve their answer on or by December 30, 2003, and Stephenson must serve his answer on or by December 31, 2003. Counsel for the Defendants represents that, because of the Christmas holidays, she has been unable to meet and to confer with her clients regarding their response to the Complaint and about their affirmative defenses to the claims therein. The Defendants state that they will need until and including January 21, 2004 to file their answer or other responsive pleadings.

Brewer did not list his telephone number on the summonses. Counsel for the Defendants states that she could not contact him to determine if he concurs in or opposes this motion. On January 7, 2004, the Court set a hearing for Monday, January 12, 2004. Because of duties in Las Cruces, the Court, on January 9, 2004, reset the hearing for Tuesday, January 13, 2004. The Court mailed Notices of both settings to Brewer. The Court held a telephone hearing on this motion on Tuesday, January 13, 2004. Brewer did not appear, either in person or by telephone.

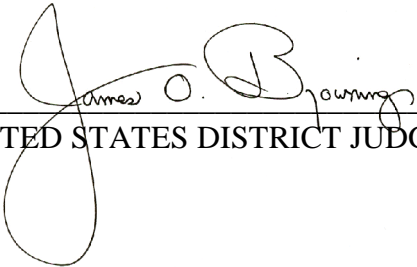
ANALYSIS

The Defendants sought this extension before their time to answer or otherwise respond expired. Thus, pursuant to rule 6, this request is timely. See Fed. R. Civ. P. 6. The Court has the authority to grant the relief sought in the motion.

The Court determines that it is in the best interests of all parties that the answer or other responsive pleading be as factually accurate as possible. The Court believes that counsel for the Defendants may be able to achieve the desired accuracy only if the Court grants the requested additional time.

IT IS THEREFORE ORDERED that the Defendants' Motion for Extension of Time to File

Answer or Other Responsive Pleading is granted. Defendants Oscar Villegas, Pedro T. Gutierrez, Vicente Alvarado, Larry Smyth, James Vautier, Daniel Torgomson, Robert Dilley, and Zach Stephenson shall have until and including January 21, 2004 to file their answer or other responsive pleading to the Plaintiff's Complaint.



UNITED STATES DISTRICT JUDGE

James W. Brewer
Chicago, Illinois

Plaintiff pro se

Robert M. White
City Attorney
Kathryn Levy
Deputy City Attorney
City of Albuquerque
Albuquerque, New Mexico

Counsel for the Defendants